

List of Subjects in 25 CFR Part 515

Administrative practice and procedure, Privacy, Reporting and recordkeeping.

Accordingly for the reasons set forth above, the Commission is proposing to amend Part 515 of Title 25 to read as follows:

Part 515 – Privacy Act Procedures

Sec.

515.1 Purpose and scope.

515.2 Definitions.

515.3 Request for access to records.

515.4 Responsibility for responding to requests.

515.5 Responses to requests for access to records.

515.6 Appealing denials of access.

515.7 Request for amendment or correction of records.

515.8 Requests for an accounting of record disclosure.

515.9 Fees.

515.10 Penalties.

515.11 General exemptions.

515.12 Specific exemptions.

The authority citation continues to read as follows:

AUTHORITY: 5 U.S.C. 552a

Sec. 515.1 Purpose and scope.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Privacy Act of 1974, Public Law 93-579, as amended (5 U.S.C. 552a). These regulations should be read together with the Privacy Act, which provides additional information about records maintained on individuals. These regulations apply to all records in systems of records maintained by the Commission that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission. The Commission shall also process all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, which gives requesters maximum disclosure.

Sec. 515.2 Definitions.

For the purposes of this subpart:

- (a) Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.
- (b) Maintain means store, collect, use, or disseminate.
- (c) Record means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or photograph.

- (d) System of records means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.
- (e) Routine use means use of a record for a purpose that is compatible with the purpose for which it was collected.
- (f) Working day means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

Sec. 515.3 Request for access to records.

- (a) How made and addressed. You may make a request to the Commission for access to records about yourself. Your request may be made in writing to the Commission at 1441 L Street, NW, Suite 9100, Washington, DC 20005, or in person during the hours of 9:00 am to noon and 2:00 pm to 5:00 pm Monday through Friday.
- (b) Description of records sought. You must describe the records sought in enough detail to enable Commission personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept.
- (c) Agreement to pay fees. If you make a Privacy Act request for access to records it shall be considered an agreement by you to pay all applicable fees charged

under section 515.9, up to \$25.00. When making a request you may specify a willingness to pay a greater or lesser amount.

(d) Verification of identity. When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, which is a law that permits statements to be made under penalty of perjury as a substitute for notarization.

(e) Verification of guardianship. When you make a request as a parent or guardian for records pertaining to another individual you must establish:

- (1) The identity of the individual who is the subject of the record by stating the name, current address, date and place of birth of the individual;
- (2) Your own identity, as required is paragraph (d) of this section;
- (3) That you are the parent or guardian of the individual and proof of such relationship by providing a birth certificate showing your parentage or a court order establishing guardianship.

(f) Verification in the case of third party information requests. If you are making a request for records concerning an individual on behalf of that individual, you must provide a statement from the individual verifying the identity of the individual as provided in paragraph (d) of this section. You must also provide a statement from the individual certifying the individual's agreement that records concerning the individual may be released to you.

Sec. 515.4 Responsibility for responding to requests.

- (a) In general. In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the Commission shall inform you of that date.
- (b) Authority to grant or deny requests. The officer designated by the Chairman of the Commission shall make initial determinations either to grant or deny in whole or in part access to records.
- (c) Consultations and referrals.
- (1) When a requested record has been created by another Federal Government agency that record shall be referred to the originating agency for direct response to the requester. The requester shall be informed of the referral unless otherwise instructed by the originating agency. This is not a denial of a Privacy Act request and thus no appeal rights accrue to the requester.
 - (2) When a requested record contains information originating with another Federal Government agency, the record shall be referred to the originating agency for review and recommendation on disclosure. The originating agency shall respond to the Commission with its recommendation. The Commission shall not release any such record without prior consultation with the originating agency.

Sec. 515.5 Response to requests for access to records.

- (a) Acknowledgement of requests. Requests for a determination under section 515.3(a) of this part shall be acknowledged by the Commission within 10 working days after the date on which the Commission receives the request.
- (b) Grants of requests for access. Once the Commission makes a determination to grant a request for access in whole or in part, it shall notify you in writing, informing you of any fees charged for the request. Once fees are paid, the Commission will release the records to you. If a request is made in person, the Commission will disclose the records to you in a manner not unreasonably disruptive of its operations. A written record will be made of the disclosure. If you are accompanied by another individual, you must authorize in writing any discussion of the records in the presence of the other person.
- (c) Adverse determinations of requests for access. If the Commission makes an adverse determination denying a request for access in any respect, it shall notify you of that determination in writing. Adverse determinations or denial of requests consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that the requested record is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of request for expedited processing. The notification letter shall be signed by the Chairman of the Commission or the Chairman's designee and include:
- (1) The name and title of the person responsible for the denial;
 - (2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied to the denial;

- (3) A statement that the denial may be appealed under section 515.6 and a description of the requirements of section 515.6.

Sec. 515.6 Appealing denials of access.

- (a) Appeals. If your request for access has been denied in whole or in part, you may appeal the decision to the Commission no later than 30 business days after the adverse decision is rendered. The appeal shall be in writing and describe the determination decision that is being appealing. Mark both the appeal letter and envelope "Privacy Act Appeal."
- (b) Responses to appeals. The decision on your appeal will be made in writing within 30 business days of receipt of the appeal by the Commission. For good cause shown, however, the Commission may extend the 30 business day period. You shall be promptly notified of such extension and the anticipated date of a decision. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the determination, including any Privacy Act exemption(s) applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision. You shall also be advised of your right to institute a civil action in a Federal district court for judicial review of the decision.
- (c) When appeal is required. If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

Sec. 515.7 Request for amendment or correction of records.

- (a) Amendment. You may make a request for an amendment or correction to a Commission record about you by writing directly to the Privacy Act Officer. Your request should identify each particular record in question, state the amendment or correction that you seek, and state why you believe that the record is not accurate, relevant, timely, or complete. You may include any documentation you think would be helpful.
- (b) Privacy Act Officer Response. The Privacy Act Officer shall, not later than 10 working days after receipt of a request for an amendment or correction of a record, acknowledge receipt of your request and notify you whether your request is granted or denied. If your request is granted in whole or in part, the Privacy Act Officer shall describe the amendment or correction made and shall advise you of your right to obtain a copy of the amended or corrected record. If the request is denied in whole or in part, the Privacy Act Officer shall send you a letter signed by the Chairman of the Commission or the Chairman's designee stating:
- (1) The reason(s) for the denial; and
 - (2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and address of the official who will act on your appeal.
- (c) Appeals. You may appeal a denial of a request for an amendment or correction in the same manner as a denial of a request for access to records in section 515.6. If your appeal is denied, you shall be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

- (d) Statement of Disagreement. If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the Commission's denial of your request for an amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement shall be placed in the system of records in which the disputed record is maintained and the record shall be marked to indicate a Statement of Disagreement has been filed.
- (e) Notification of amendment, correction, or disagreement. Within 30 working days of the amendment or correction of the record, the Commission shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If you filed a Statement of Disagreement, the Commission shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend the record.
- (f) Records not subject to amendment. Section 515.12 lists the records that are exempt from amendment or correction.

Sec. 515.8 Requests for an accounting of record disclosure.

- (a) How made and addressed. Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the

Commission to another person, organization, or agency of any record about you. This accounting contains the date, nature and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made in writing to the Commission.

(b) Where accountings are not required. The Commission is not required to provide an accounting to you where they relate to:

- (1) Disclosures for which accountings are not required to be kept, such as disclosures that are made to employees within the agency and disclosures that are made under the FOIA;
- (2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or
- (3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) Appeals. You may appeal a denial of a request for an accounting within 30 business days after the adverse decision is rendered in the same manner as a denial of a request for access to records in section 515.6 and the same procedures will be followed.

Sec. 515.9 Fees

The Commission shall not charge you for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as

a necessary part of reviewing the record, the Commission shall not charge you for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplicating a copy for you.

Sec. 515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

Sec. 515.11 General exemptions. [Reserved]

Sec. 515.12 Specific exemptions.

- (a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

Management Contract Individuals Record System

- (b) The exemptions under paragraph (a) of this section apply only to the extent that information in these systems is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission, with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.
- (c) Exemptions from the particular sections are justified for the following reasons:

- (1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.
- (2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.
- (3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.
- (4) From 5 U.S.C. 552a(e)(1) because:
 - i. It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

- ii. Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.
- iii. In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.
- iv. In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.